

The case of

12

SHIP MONY

Briefly Discoursed,

ACCORDING TO THE
Grounds of Law, Policie,
and Conscience.

AND

MOST HUMBLY PRESEN-
ted to the Censure and correcti-
on of the high Court of PARLIAMENT

NOV. 3. 1640.

By Henry Parker



Printed anno Dom. 1640.

Y. M. C. A. Bldg.

Chas. H. ...

Admission ...

... 1940.



T H E
Case of SHIP-MONEY briefly
discoursed,

GREAT Fires happening in townes or cities, are sometimes the cause that other contiguous houses are spoiled and demolisht, besides those which the flame it self ceazes: so now, in the case of Ship-mony, not only the judgement it self which hath bene given against the subject, doth make a great gap and breach in the rights and Franchises of England, but the arguments and pleadings also, which conduced to that judgement, have extended the mischief further, and scarce left any thing unviolated. Such strang contradiction there hath been amongst the pleaders, and dissent amongst the Judges, even in those Laws which are most fundamentall, that we are left in a more confused uncertainty of our highest priviledges, and those customes which are most essentiall to freedome, then we were before. To introduce the legality of the Ship-scot, such a Prerogative have been maintained, as destroyes all other Law, and is incompatible with popular liberty: and such art hath been used to deny, traverse, avoid, or frustrate the true force or meaning of all our Lawes and Charters, that if we grant Ship-mony upon these grounds, with Ship-mony wee grant all besides. To remove therefore this uncertainty, which is the mother of all injustice, confusion, and publick dissention, it is most requisite that this grand Councell, and resshault Court (of which none ought to think dishonourably) would take these *Ardua Regni*, these weighty and dangerous difficulties, into

A 2

serious

serious debate, and solemnly end that strife which no other place of Judicature can so effectually extinguish.

That the King ought to have aid of his subjects in time of danger, and common aid in case of common danger, is laid down for a ground, and agreed upon by all sides, but about this aid there remains much variety and contrariety of opinion amongst the greatest Sages of our Law; and the principall points therein controverted are these foure: First by what Law the King may compell aid. Secondly, when it is to be levied. Thirdly, how it is to be levied. Fourthly what kinde of aid it must be.

I Some of the Judges argue from the Law of Nature, that since the King is head, and bound to protect, therefore he must have wherewithall to protect, but this proves only that which no man denies. The next Law insisted upon, is Prerogative, but it is not punctually explained what Prerogative, whether the Prerogative naturall of all Kings, or the Prerogative legall of the Kings of *England*: Some of the Judges urge, that by Law there is naturall allegiance due to the King from the subject; and it doth not stand with that allegiance, that the Princes cannot compell aid, but must require the common consent therein. Others presse, that the Law hath serled a property of goods in the subject, and it doth not stand with that property, that the King may demand them without consent. Some take it for granted, that by Royall Prerogative, as it is part of the Laws of *England*, the King may charge the Nation without publick consent, and therefore it being part of the Law, it is no invasion upon Law. Others take it for granted, that to levie mony without consent is unjust, and that the Kings Prerogative cannot extend to any unjust thing: So many contrary points of war do our Trumpets sound at once, and in such confusion do our Judges leave us, whilst either side takes that for granted, which by the other is utterly denied. By these grounds Royal Prerogative, & popular liberty.

ty may seeme things irreconcilable; though indeed they are not, neither doth either side in words affirme so much, though their proofes be so contradictory. King *Charles* his maxime is, that the peoples liberty strengthens the Kings prerogative, and the Kings prerogative is to maintaine the peoples liberty: and by this it seemes that both are compatible, and that prerogative is the more subordinate of the two. The Kings words also since have been upon another occasion, That he ever intended his people should enjoy property of goods, and liberty of persons, holding no king so great as he that was king of a rich and free people and if they had not property of goods, and liberty of persons, they could be neither rich nor free. Here we see that the liberty of the subject is a thing which makes a King great; and that the Kings prerogative hath only for its end to maintain the peoples liberty. Wherefore it is manifest, that in nature there is more favour due to the liberty of the subject, then to the Prerogative of the King, since the one is ordained only for the preservation of the other; and then to solve these knots, our dispute must be, what prerogative the peoples good and profit will bear, not what liberty the kings absolutnesse or prerogative may admit, and in this dispute it is more just, that we appeal to written Laws, than to the breasts of kings themselves. For we know Nationall laws are made by consent of Prince and people both, and so cannot be conceived to be prejudiciall to either side; but where the meere will of the Prince is Law, or where some few ministers of his may alleage what they will for Law in his behalfe, no mediocrity or justice is to be expected. we all know that no slave or villaine can be subjected to more miserable bondage than to be left meerly to his Lords absolute discretion: and we all see that the thraldome of such is most grievous, which have no bounds set to their Lords discretion. Let us then see what *Fortescue* writes, not regard what Court-dependants do interpret, and his words are,

are, fol. 84. cap. 36. *Rex Anglia nec per se, nec per suos Ministros Tollagia subsidia, aut quævis onera alia imponit legis suis, aut leges eorum mutat, aut nova condit sine concessione vel assensu totius regni sui in Parlamento suo expresso*, These words are full and generall, and plain, and in direct affirmance of the ancient Law and usage of *England*, and it is not sufficient for the Kings Councell to say, that these words extend not to ship-mony: for if there were any doubt, the interpretation ought rather to favour Liberty than Prerogative.

It is not sufficient for Judge *Iones* to say, that it is *proprium quarto modo* to a King, and an inseparable naturall Prerogative of the Crown to raise monies without assent, unlesse he first prove that such Prerogative be good and profitable for the people, and such as the people cannot subsist at all without it: nay, such as no Nation can subsist without it. This word prerogative hath divers acceptions: sometime it is taken for the altitude of Honour, sometimes for the latitude of power. So we say the Prerogative of an Emperour is greater then that of a King; and that of a King greater then that of a Duke, or petty potentate: and yet of Kings wee say that the King of *Denmark* hath not so great a Prerogative as the King of *England*, nor the King of *England* as the King of *France*, &c. For here though their honour and title be the same, yet their power is not. Sometimes Prerogative signifies as much as Sovereignty; and in this generall consideration we say, that all supreme Commanders are equall: and that they all have this essentiall inseparable Prerogative, that their power ought to be ample enough for their perfection, and good of the people, and no ampler: because the supream of all humane lawes is *salus populi*. To this law all lawes almost stoope; God dispences with many of his Lawes, rather than *salus populi* shall be indangered, and that iron-law, which we call necessity it self, is but subservient to this law, for rather then a Nation shall
perish

perish, any thing shall be held necessary, and legall by necessity: But to come to the Prerogative of *England* and to speake of it in generall, and comparatively; we say it is a harmonious composition of policie, scarce to be paralleld in all the world, it is neither so boundlesse as to oppresse the people in unjust things, nor so strait as to disable the King in just things: by the true fundamental constitutions of *England*, the beame hangs even between the King and the subject: the Kings power doth not tread under foot the peoples liberty, nor the peoples liberty the Kings power.

All other Countries almost in Christendome differ from us in this module of policie: some, but very few, allow a greater spheare of Sovereignty to their Princes; but for the most part now adayes the world is given to republites, or to conditionate and restrained forms of government: howsoever we ought not to condemne any Nation as unjust herein, though differing from us; for though they seem perhaps very unpolitick, yet it is hard to be affirmed that God and Nature ever ordained the same method of rule, or scope of loyalty to all states whatsoever: besides, what dislike soever we take at other regiments, yet except it be in very great excesses or defects, we must not thinke change alwayes necessary, since custome in those great and generall points obtains the force of another nature, and nature is not to be changed. Divines of late have beene much to blame here in preaching one universall forme of government, as necessary to all Nations, and that not the moderate and equall neither, but such as ascribes all to Sovereignty, nothing at all to popular liberty: Some Lawyers also and Statesmen have deserved as ill of late, partly by suggesting that our *English* Lawes are too injurious to our King: and partly by informing, that this King is more limited by Law then his progenitors were, and that till he be as the King of *France* is, *Rex asinorum*, he is but a subject to his subjects, & as a minor under the command of guardiās: but what hath en-
fued.

sued out of the Kings jealousy of his subject, and overstraining his prerogative? nothing but irreparable losse and mischief both to King and Common-wealth: and indeed the often and great infections and insurrections which have happened of late, almost all over Europe, may suffice to warn all wise Princes, not to overstraine their Prerogatives too high; not to give eare to such Counsellours as some of our Judges are, who affirme our Kings Prerogative to be in all points unalterable, and by consequence not depending upon law at all: by another exception of this word Prerogative in *England*, we mean such law, here establisht, as gives the King such and such preheminences and priviledges before any subject; such as are not essentiall to royaltie, but may be annulled by the same power by which they were created. That a King shall defend and maintaine his subjects, is a duty belonging to the Office, not a priviledge belonging to the Crowne of a King; this obligation nature layes upon him, and no other power can dissolve it. Also that subjects shall afford aid, and joyne with their Princes in common defence, is a duty arising from the alleageance of the people, and not an honour redounding only to the Prince; natures law hath made this a tie, not to be changed or infringed: for that which is annexed by an eternall superiour power cannot bee made severable by a temporall humane power: but that such an Emperour, King or Potentate, shall have such or such aid, and compell it by such or such meanes, at such or such times, as to the particular modes, and circumstances of his aid, particular municipall Lawes must direct, and these it would be as dangerous to alter, as it is absurd to hold unalterable. In a Parliament held by King James, it was debated, whether or no Tenures in *Capite*, and allowance of purveyors might be repealed and divided from the Crowne, and it was held that by no Act or statute they could be taken away, because they were naturally inherent to the Crowne.

This

This resolution seemes very strange to me, since the Law of Tenures and purveyors is not so naturall and essentiall to monarchy, that it cannot or may not subsist without it. For if in other countries it be held a meere political way, perhaps an inconvenient thing, then why may not the Princes Royalt, and the peoples safety, be preserved intire without it in *England*: And if so, then why shall not the same authority have vigor to repeale it, which wanted not vigor to inforce it. I cannot conceive that the Parliament herein reflected upon what was formall in Law to be done, but rather upon what was convenient: such *insignia suprema Majestatis* as these; I did not hold it fit to bee dismembred from the Crown in policie, I only hold it a thing possible in law, nay though the King enjoyes diverse such like prerogatives more, as *J. Jones* thinkes, then any Prince in Christendome, yet should not I desire or advise to pluck away one the least Flower out of the Regall Garland, nor would it be (perhaps) profitable for the State, to suffer the least diminution thereof. We know also that in *England* the prerogative hath beene bound in many cases, by Statute-law and restrained of diverse such priviledges, as were not essentiall, but meerely politicall, *Nullum tempus occurrit Regi* this was one of the English Royalties, and very beneficiall many wayes, yet we know this is in diverse cases limited by act of Parliament, and that very justly, as *I. Hutton* argues, The great and ancient Tax of Dangler, it was a Subsidue taken by the Kings of *England*, for the common defence of the Kingdome, yet this was first released by King *Stephen*, and after abolished for ever by the statutes of *Edward* the first: and there is no reason why an Act of Parliament should not be as valid in our case as it was in that. Wherefore it is to be admired, that *J. Jones* should account this way of aid by ship-money or any other without publick consent, to be *proprium quarto modo* to the Kings of *England*, and since irrepealable, since our Kings have in all ages done such noble acts

without it ; and not only defended , but also enlarged their Dominions. The last kinde of acception of this word Prerogative is improper. Thus to pardon malefactors, to dispence with penall Lawes, to grant *Non obstantes*, to be free from attainders, to call or discontinue, to prorogue or dissolve parliaments, &c. are not truly and properly called prerogatives : these all in some sense may be called Munities, or indemnities belonging to the sacred person of the King, as he is inviolable, and subject to no force and compulsion of any other, and as he is the soul of law, in whose power alone it is to execute Law, and yet not to be constrained thereto. To grant a pardon for some malefactors, for some crimes, may perhaps bee as haynous as to commit them; and that which drawes a guilt upon the King, cannot be said to be his priviledge. If it might be tearmed a royalty, that the king is not questionable or punishable, or to be forced to such acts as tend to the obstruction of justice, it might as well be so tearmed in acts tending to the transgression of Law. for in both he is alike free from any coercive or vindicative force. For it is out of necessity, not honour, or benefit, that the King hath a freedome from constraint, or restraint in these cases ; and that this freedome is inseparable, because no force can be used but by superiours or equals, and hee which hath either superiours or equal, is no king, if a king should shut up the Courts of ordinary Justice, and prohibit all pleadings and proceedings betweene man and man, and refuse to authorize Judges for the determining of suits, he would be held to do a most unkingly thing: and yet this may be as truly called a prerogative, as to disuse and dissolve Parliaments. But it may be objected, that the King, besides such negative priviledge and freedome from force, hath also a positive and siezing subjects lands, &c. in divers cases, as in making Bulwarks upon any mans land for common defence, &c. To this it may be answered, that to such power the King is not intituled by his prerogative, nor is it any benefit

to him, necessity herein is his only warrant: for either this private inconvenience must happen: or a public ruine follow; and in nature the lesse and private evill is to be chosen; and here the party trespassed enjoys safety by it, and shall after receive satisfaction for his detriment. Were there such apparent unavoidable necessity in the Ship-scop, that either that course must be taken, or the community inevitable perish, or were the King wholly disinterested in point of profit, or were there hope of restitution, it could not be without consent, and so not against Law. So then, for ought that is yet alledged, Prerogative, except that which is essential to all kings. without which they cannot be Kings, is alterable, and it ought to be deduced out of the written and known Lawes of the Kingdome, and Law is not to bee inferred out of that, we ought not to presume a Prerogative, and thence conclude it a Law, but we ought not to cite the Law, and thence prove it to be prerogative. To descend then to our own Lawes, yet there our Judges vary too. What the common law was in this point is doubted by some, and some say if the common law did allow the King such a prerogative to lay a generall charge without consent then statutes cannot alter it.

Some do not accept against the force of statute law, but avoid our particular statutes by divers severall evasive answers. Some say our great Charter was but a grant of the King, extorted by force; some except against the 25. of *Ed. 1.* because there is *salvo* in it: some against the 34. of *Ed. 1.* as made in the Kings absence some object against the 14. of *Ed. 3.* as if it were temporary, and because it is not particularly recited in the petition of right, and the common evasion of all beneficiall statutes, and of the petition of right, is, that they binde the King from imposing pecuniary charges for the replenishing of his own coffers, but not from imposing such personall services, as this Ship-scop is, in time of danger and necessity. J *Crawly* maintaines this Ship-scop to be good

by prerogative at the common Law, and not to be altered by statute. What the common law was, this court can best determine, but it is obvious to all men, that no Prerogative can bee at the common Law, but it had some beginning, and that must be from either King or Subject, or both: and in this, it is not superiour to our statute law, and by consequence not unalterable. The Medes and Persians had a Law, that no law once past, should ever be repealed; but doubtlesse this Law being repealed first, all others might after suffer the same alteration, & it is most absurd to think that this Law might not bee repealed by the same authority by which it was at first enacted. J. Jones sayes, our statutes restraine Tollages in generall termes, and cites divers cases, that a speciall interest shall not passe from the King, but in speciall terms: but his cases are put of privat grantees, over whom the King ought to retaine a great preheminance: but the law is, that where the whole state in grantee, that grant shall have the force of a statute, because it is *pro bono publico*, and because the whole state is in value and dignity as much to be preferred before the King, as the King is before any privat grantee, But J. Jones sayes further, if generall words shall extend to these extraordinary publike levies, then they may as well extend to his ordinary privat rights and intradoes, and so cut off *Aide pur faire filz Chivalier, &c.* The contrary hereof is manifest for the intent of all our statutes is to defend the subject against such publike Tollages and impositions, as every man is equally liable to, and as are not due in law otherwise, or recoverable by ordinary action. Now these aids, &c. and the kings ordinary revenues and services, are not such as are due from every man, but recoverable by ordinary action. Howsoever in all these doubts the law would now be made clear, and not only the vertue of statutes in generall, but also the true meaning of our particular Charters would be vindicated from these exceptions.

2 I come now to our second difficulty, when a publike charge may

may be laid. Here the favourers of ship-money yet agree, that the King may not charge the subject meerly to fill his own coffers; or annually, or when he will invade a forraigne enemy, or when Pirates rob, or burn Townes and Burroughs, for these, ordinary defence is sufficient: and when there is imminent and eminent danger of publike invasion, wee agree that the subject may be charged.

The *quære* then is, whether the King be sole Judge of the danger, and of the remedy, or rather, whether he be so sole judge, that his mere affirmation and notification of a danger foreseene by him at a distance, or pretended only to be foreseene, shall be so unquestionable that he may charge the Kingdome thereupon at his discretion, though they assent not, nor apprehend the danger as it is forwarned. J. Crooke proves the contrary thus: If danger, sayeth he, be far distant, if it be in report only of French Armadoes, and Spanish preparations, &c. though it be certaine and not pretensive, yet Parliamentary aid may be speedy enough: and if it be imminent, then this way of Ship-scot will not be speedy enough; for either the designe is really to have new ships built, and that will require longer time than a Parliament; or else money only is aimed at, whereby to arme other ships, and for this the Law hath provided a more expedite way than by Ship-scot, in case of imminent danger.

If then the King have power to presse all mens persons, and Ships, and all are bound *exponere se, & sua*, and to serve *propriis sumptibus*, when imminent danger is, and this defence hath alwayes been held effectually enough, it is consequent, that if he be not destitute of competent aid in present distresses, he cannot pretend a greater necessity in dangers more remote, when they are but suspected, or perhaps pretended only.

My Lord *Bramston* sayes here, that there is a necessity of preventing a necessity: and that the Sea is a part of the Kingdome, and

and therefore of necessity to be guarded as the Kingdome. The answer is, That the safety of the Kingdome doth not necessarily depend upon the Ship-scot, and so this necessity being removed, the necessity grounded upon this, falls off of it self. For if the Kingdome may escape ruine at hand when it is a storme, without ship-mony, it may much more escape it a far off being but a cloud. But grant the Sea to be a part of the Kingdome to some purposes yet how is it a part essentiall, or equally valuable; or how doth it appear that the fate of the Land depends wholly upon the dominion of the Sea? *France* subsists now without the regiment of the Sea, and why may not we as well want the same? If *England* quite spend it selfe, and poure out all its treasure to preserve the Seigniorie of the seas, it is not certaine to exceed the Navall force of *France*, *Spaine*, *Holland*, &c. And if it content it selfe with its ancient strength of shipping, it may remaine as safe as it hath formerly done. Nay, I cannot see that either necessity of ruine, or necessity of dishonour can bee truly pretended out of this, that *France*, *Spaine*, *Holland*, &c, are too potent at sea for us.

The dominion of the Seas may be considered as a meer right, or as an honour, or as a profit to us. As a right, it is a theme fitter for schollers to whet their wits upon, then for Christians to fight and spill bloud about: and since it doth not manifestly appear how or when it was first purchased, or by what Law conveyed to us, we take notice of it only as matter of wit and disputation. As it is an honour to be masters of the sea, and to make others strike saile to us as they passe; its a glory fitter for women and children to wonder at, then for states-men to contend about. It may be compared to a chaplet of flowers, not to a diadem of gold: but as it is a profit to us to fence and inclose the sea, that our neighbours shall not surprise us unawares; its matter of moment, yet it concerns us but as it doth other Nations: by too insolent contestations hereupon, we may provoke God, and dishonour

honour our selves: we may more probably incense our friends, then quell our enemies, we may make the land a slave to the sea, rather then the sea a servant to the land; but I pray Master *Selden* to pardon me for this transition, and I returne my matter. If the Kingdome could not possibly subsist without ship-mony in such a danger, yet there is no necessity that the King should be so sole Judge of that danger, as that he may Judge therein contrary to the opinion, and perhaps, knowledge of other men. I allow the King to be supream, and consequently sole Judge in all cases whatsoever, as to the right, and as to the diffusion of Judgement; but as to the exercise and restraint of judgement, he is not, nor ought not to be accounted sole Judge. In matters of Law the King must creat Judges, and swear them to Judge uprightly and impartially, and for the subject against himself, if Law so require, yea, though he be of contrary judgement himselfe, and by his Letters sollicite the contrary. The Kings power is as the digestive faculty in nature, all parts of the body contribute heat to it for their own benefit, that they may receive back againe from it a better concocted and prepared supply of nourishment, as it is their office to contribute, so it is the stomacks to distribute.

And questionlesse sole Judgement in matters of state does no otherwise belong to the King, then in matters of Law, or points of Theologie. Besides as sole Judgement is here ascribed to the King, he may affirme dangers to be foreseen when he will, and of what nature he will: if he say only, *Datum est nobis intelligi*, as he does in his writ, &c. To his sole in disputable judgement it is left to lay charges as great and as often and as great as he pleases. And by this meanes if he regard not his word more then his profit, he may in one year draine all the Kingdome of all its treasure, and leave us the most despicable slaves in the whole world.

It is ridiculous also to alleage, as *J. Jones* does, that it is contrary to presumption of Law, to suspect falsity in the King: for
if

if Law presume that the King will not falsly pretend danger to vex his subjects, of his own meere motion, yet no Law, nor reason, nor policie will presume, that the King may not be induced by mis-information to grieve the people without cause. The Sunne is not moie visible then this truth, our best Kings, King *Charles*, King *James*, Queene *Elizabeth*, and all the whole ascending line, have done undue illegal things sometimes, contrary to the rights and Franchises of *England*, being mis-informed, but having consulted with the Judges or states in Parliament, they have all retracted and confessed their error. Nay, there is nothing more knowne, or universally assented to, than this; that Kings may be bad; and it is more probable and naturall, that evill may be expected from good Princes, than good from bad, Wherefore since it is all one to the state, whether evill proceed from the king mediately or immediatly; out of malice or ignorance: and since wee know that of all kinds of government Monarchicall is the worst, when the Scepter is wielded by an unjust and unskillfull Prince, though it be the best, when such Princes as are not seduceable (a thing most rare) reigne, it will be great discretion in us, not to desert our right in those Lawes which regulat and confine Monarchie, meerly out of Law-presumption; if we must presume well of our Princes, to what purpose are Lawes made: and if Lawes are frustrate and absurd, wherein do we differ in condition from the most abject of all bond-slaves?

There is no Tirranny more abhorred than that which hath a controlling power over all Law, and knowes no bounds but its own will: if this be not the utmost of Tirranny, the Turks are not more servile then we are: and if this be Tirranny, this invention of Shipmony makes us as servile as the Turks. We must of necessity admit, that our Princes are not to be mis-led, and then our Lawes are needlesse: or that they may be mis-led, and then our Lawes are uselesse. For if they will listen to ill counsell, they
may

may be moved to pretend danger causlessly; and by this pretence defeat all our lawes and liberties, and those being defeated, what doth the English hold, but at the Kings meer discretion, wherein doth he excell the Captives condition? if we shall examine why the Mahometan slaves are more miserably treated, than the Germans, or why the French Pefants are so beggerly, wretched, and bestially used more then the Hollanders, or why the people of Millaine, Naples, Sicily are more oppressed, trampled upon, and inthrallled then the Natives of Spaine? there is no other reason will appear, but that they are subject to more immoderat power, and have lesse benefit of law to relieve them.

In nature there is no reason, why the meanest wretches should not enjoy freedome, and demand justice in as ample measure, as those whome law hath provided for: or why Lords which are above law should be more cruell then those which are more conditionate: yet we see it is a fatall kind of necessity only incident to immoderate power, that it must bee immoderately used: and certainly this was well known to our ancestors, or else they would not have purchased their charters of freedome with so great an expence of bloud as they did, and have endured so much so many yeares, rather then to be betrayd to immoderate power, and prerogative: let us therefore not be too carlesse of that, which they were so jealous of, but let us looke narrowly into the true consequence of this Ship-scur, whatsoever the face of it appeare to be, It is vaine to stop twenty leaks in a ship, and then to leave one open, or to make lawes for the restraint of loyalty all other-ways, that it may not overflow the estates of the comminallty at pleasure, and yet to leave one great breach for its irruption.

All our Kings hitherto have beene so circumscribed by law, that they could not command the goods of their subjects at pleasure without common consent: but now if the King be but persuaded to pretend danger, hee is uncontroleable Master of all

we have, one *Datum est intelligi*, shall make our *English statutes* like the politicke hedge of Gote-ham, and no better: I do not say that this King will falsifie, it is enough that we all, and all that we have are at his discretion if he will falsifie, though vast power be not abused, yet it is a great mischief, that it may, and therefore vast power it selfe is justly odious, for divers reasons. First, because it may fall into the hands of ill disposed *Princes*, such as were K. *Iohn*, *Henry* the third, *Edward* the second, *Richard* the second. These all in their times made *England* miserable, and certainly had their power been more unconfinable they had made it more miserable. The alterations of times do not depend upon the alteration of the people, but of *Princes*: when *Princes* are good it fares well with the people, when bad, ill.

Princes often vary, but the people is alwayes the same in all ages, and capable of small, or no variations: If *Princes* would endure to hear this truth, it would be profitable for them, for flatterers alwayes raise jealousies against the people; but the truth is, the people as the sea, have no turbulent motion of their own, if *Princes* like the windes do not raise them into rage. Secondly, vast power if it finde not bad *Princes* it often makes *Princes* bad: It hath often charged *Princes*, as it did *Nero* from good to bad, from bad to worse: but *Vespasian* is the only noted man which by the Empire was in *melius mutatus*: dayly experience teaches this. *Dangelt in England* within 20, years increased unto a four-fold *Proportion*.

Subsidies were in former times seldome granted, and few at a time, now *Parliaments* are held by some, to be of no other use then to grant them.

The Fox, in *Esop*, observed that of all the Beasts which had gone to visite the Lyon, few of their foot-steps were to be seene retrorsum, they were all printed adversum. And we find at this day, that it is far more easie for a King to gaine undue things from the people, than it

is for the people to re-gaine its due from a King: This King hath larger Dominions, and hath reigned yet fewer years, and enjoyed quieter times, then Queene Elizabeth: And yet his taxations hath been far greater and his Exploits lesse honourable, and the yet people is still held in more jealousie.

To deny Ship-mony which sweeps all, is held and accounted a rejection of naturall Allegiance. I speak not this to render odious the Kings blessed government, God forbid, I hold him one of the mildest, and most gracious of our Kings: And I instance in him the rather, that we may see, what a bewitching thing flattery is, when it touches upon this string of unlimitable power: if this ambition and desire of vast power were not the most naturall, and forcible of all sins, Angels in Heaven, and man in Paradize had not falne by it; but since it is, Princes themselves ought to be the more cautious and cautilous of it.

Thirdly, vast power if it neither find nor make bad Princes, yet it makes the good government of good Princes the lesse pleasing, and the lesse effectuell, for the common and publicke good: And therefore it is a rule both in Law, and Policie, and Nature, Non recurrendum est ad extraordinaria, in his quæ fieri possunt per ordinaria: All extraordinarie aides are horrid to the people, but most especially such as the Ship-scot is, whereby all liberty is over-throwne, and all Law subjected unto the Kings meer discretion.

Queen Elizabeth in eighty eight was victorious without this Taxation, and I am fully perswaded, she was therefore victorious the rather, because she used it not. Her Arte was to account her subjects hearts as her unfailing Exchequer, and to purchase them by doing legall just things, and this Arte never failed nor deceived her, and in that dismall gust of danger, it was good for her and the whole state both, that she did not relye upon forced aides of money, or the Swords of grieved Souldiers: For this Ship-money, nothing can be pretended but necessity, and certainly necessity is ill pretended; when the meer doing of the thing, is as dangerous as that for which it is done: did not this

Ship-Scott, over-throw all popular Liberty, and so threaten as great a mischief as any Conquest can. And were not the people justly averse from it? Yet meerly for the peoples disaffection to it, it is dangerous to be relied upon in case of great danger.

Wee know Nature teacheth us all, Of two Evils to chuse that which we think the least, though it be not so; therefore if the people apprehend this Remedy as a Thing worse then the Disease, though they be mistaken therein, yet that very mistake may prove fatall.

The Roman Army being harshly treated by the Senators, and their proud Generall, did refuse to charge upon the Enemy, or to resist the charge of the Enemy, they chose rather to be slaughtered by Strangers, then inthrallled by their Countrey-men. The English also in the late Scottish invasion, by reason of this and many other causes of Discontent, made so faint resistance, that they did almost in a manner Confesse, That they held themselves as miserable already, as the Scots could make them.

Thus we see there is no necessity of loveying Ship-money, there is rather necessity of Repealing it: And we see that presumption of Law doth not abet this necessity, but rather crosse it. And whereas J Jones further saith, That the Kings Majestic hath no benefit by Ship-money, and therefore presumption is the stronger, that the King will not take it causelessly. We may answer: the Ship-money is a very great benefit unto the King: For if not immediatly, yet mediately it is become a Revenue, inasmuch as by this Addition all other Revenues of the Crowne, nay, and Tunnage and Poundage, which were not designed only for ordinary expences, but for extraordinarie employments, and publicke charges also, are now become discharged of that tie, and the Common-wealth hath quite lost all its interest and property in them. In point of benefit therefore it is all one to the Kings Majestic, and in point of burthen, it is all one to the Subject, whether Ship-money be accounted of as part of the Kings annuall Rents, or no, since by
it his

it, his rents are enlarged: And as to the Subject there is no obligation, that this Levy shall not hereafter incorporate with the rest of the Kings Majesties intradoes, and be swallowed up as Tunnage and Poundage now are. Thus we see what the Necessity is, and presumption of Law, which was so much insisted upon, and yet for a further confutation of both, Time, the mother of Truth, hath now given us more light. Now that great danger which was pretended so many yeares together for the necessity of raising so great supplies of treasure, is a small cloud blown over, making it apparent that Kings may be mis-informed; and by misinformation take Mole-hills for Mountaines, and cast heavie burthens upon their subjects.

3. But I come now to my third difficulty, how a publick charge is to be laid upon the Kingdome. The law runs generally, that in England no Tollage or pecuniary charge may bee imposed *Forque per common assent de tout la Realme*, or, *Si non per common consent de Parliament*. Some presidents, or matters of fact appear, wherein some Kings have divers times invaded this right of the subject, but upon conference had with the Judges, or petition in Parliament, redresse was ever made, and the subjects right re-established. All the colour which can be brought to answer the Law in our case, is, that the words of the Law are generall Taxes and Tollages, but do not by speciall mention restrain extraordinary impositions, in time of extraordinary danger. But we know the Petition of Right, 3. Car. is grounded upon former statutes, and recites divers of them, and is a clear affirmance of the common right of England; and yet by that the commissions for Loanes were damned: and it is evident that those Loanes were demanded for the generall defence of the Kingdome in time of imminent danger; and by the same statute, not only Loanes, but all other levies of money upon what pretence of danger soever *Si non per common consent*, are condemned as illegall, and contrary to the Lawes and Rights of England. Two things therefore are objected

objected against Parliaments: First, that they are of slow motion, and so most of the Judges alledge. Secondly, that they may bee perverse and refuse due aid to the King, and so *J. Crawley* boldly suggests. For answer we say in generall: First, that it is the wisdom of Kings to be alwayes vigilant, and to have their eyes so open upon forraigne Princes, and to maintaine such intelligence that no preparation from abroad may surprize them before recourse had to Parliament; and this is very easie to insular Princes, who have a competent strength of shipping; Secondly, to have alwayes in readines against all sudden surprizes, a sufficient store of ammunition and arms both for sea and land service: and the revenues of the Crowne of England are sufficient for this purpose, and have beene held more then sufficient in former times, when hostility was greater, and the Kingdome smaller. Thirdly to seeke advise and assistance from Parliaments, frequently in times of quiet, as well as of danger, as well when warre is but smoaking, or kindling, as when it is blowne into a flame. Before the conquest, this was held policie, and since in *Edward the thirds* time, a statute past to this purpose; and if Parliaments of late bee growne into dislike, it is not because their vertue is decaid, it is because the corruption of the times cannot endure such sharpe remedies. Fourthly, to speak particularly of this case of Ship-money we say that it is a course more slow then by Parliament: there was more expedition used in Parliament to supply King *Charles*, since he came to the Crowne, then can this way. And wee say moreover, that as the extremity of the kingdome was when Ship-money was demanded, whatsoever was pretended to the contrary, a Parliament might have been timely enough called, and seasonably enough supplied the King. As to the second objection of *J. Crawley*, too unfit to come out of any honest wise mans mouth, but much more for a Judges, Judge *Crooke* replies, that as there is *Nullum iniquum in Lege*, so neither in Parlamento. The three noted factions

red factions which are adverse to Parliaments, are the Papists, the prelates, and Court parasites; and these may be therefore supposed to hate Parliaments, because they know themselves hatefull to Parliaments. It is scarce possible for the King to finde out any other that thinks ill of Parliaments, or is ill thought of by Parliaments. Of Papists little need to be said, their enmity is confest, they have little to pretend for themselves, but that Parliaments are growne puritannicall. The prelates thinke themselves not to have jurisdiction and power enough, and they know that Parliaments thinke they have too much, & abuse that which they have much more: therefore to uphold themselves, and to crush their ill-willers, they not only tax Parliaments of puritanisme, but all puritans of sedition: as much as in them lyes, they wed the King to their quarrell, perswading him that Parliaments out of puritanisme, doe not so much aime at the fall of Episcopacie, as Monarchy, and that Episcopacie is the support of Monarchie, so that both must stand and fall together. Howbeit, because they cannot upbraid Parliaments of attempting any thing against Monarchy further then to maintaine due liberty, therefore they preach an unlimitable Prerogative, and condemne all law of liberty as injurious to Kings, and incompatible with Monarchy: *Cornwall* denies Parliamentary power and honour, *Cornwall* denies propriety of goods, further then at the Kings discretion, and *Harrison* accuses Judge *Hutton* of delivering law against Gods Law, in the case of Ship-money. And the common Court doctrine is, that Kings are boundlesse in authority, and that they only are *Cæsars* friends which justify that doctrine, and from this doctrine hath growne all the jealousies of lacc between the King and his best subjects, and this is that venomous matter which hath laien burning, and ulcerating inwardly in the bowels of the common-wealth so long. The other enemies of Parliaments, are Court dependants, and projectors, which have taken advantage

of

of this unnaturall diffention betwixt the King and his subjects, and have found out meanes to live upon the spoile of both, by siding with the King, and being instruments to extend his prerogative to the purchasing of preferment to themselves, disaffection to the King, and vexation to the common-wealth. These three factions, excepted, and some few Courtiers which are carryed with the current of example, or are left to speak unpleasing truths, there is scarce any man in all the Kings dominions, which doeth not wish for Parliaments, as the States best physick, nay almost as its naturall necessary food; but I will instance in three things wherein Parliaments excell all other Councells whatsoever.

1. *For wisdom, no advice can be given so prudent, so profound, so universally comprehending; from any other author; it is truly said by Sir Robert Cotten, that all private single persons may deceive and be deceived; but all cannot deceive one, nor one all.*

That an inconsiderable number of Privadoes should see or know more then whole Kingdomes, is incredible: vox populi was ever revered as vox Dei, and Parliaments are infallible, and their acts indisputable to all but Parliaments. It is a just law, that no private man must be wiser then Law publickly made. Our wisest Kings in England, have ever most relied upon the wisdom of Parliaments.

Secondly no advice can be so faithfull, so loyall, so religious and sincere, as that which proceeds from Parliaments, where so many are gathered together for Gods service in such a devout manner, wee cannot but expect that God should bee amongst them: and as they have a more especiall blessing promised them, so their ends cannot bee so sinister: private men may thrive by alterations: and common calamities, but the common body can effect nothing but the common good, because nothing else can be commodious for them.

Sir Robert Cotten in the life of Henry the third, according to the Court Doctrine at this present, says, that in Parliament Kings are
ever

even lesse then they should be, and the people more: If this be spoken of irregular Kings, which will endure to hear of nothing but prerogative government, it may carry some semblance of truth: but sure it is, good and wise Kings are ever greatest when they sit immured, as it were, in that honorable Assembly: as the Historie of Queene Elizabeth and many of her progenitors testifies. Its true, K. Henry the third, met with divers oppositions in Parliament: He was there upbraided, and called dilapidator regni; it was true that he was so, and the most unworthy of rule that ever sate in this Throne; yet those words became not subjects: I do not justifie, but in some part extenuate such misdeemours; for the chiefe blame of those times is not to be thronne upon the peeres and commons, but upon the King and his but-landish parasites. It is without all question also, that in those bloody unjust times, had it not been for frequent Parliaments, and that soveraigne remedy which thereby was applyed to the bleeding wounds of the Kingdome, no other help could have stanch'd them.

Even then, when Parliaments were most prevalent, & when they had so much provocation from so variable uncapable a Prince, they did not seek unconditional prerogative, or to depresse Monarchy for the future though they were a little too injurious to him in person for the present.

Since that time also many Parliaments have had to struggle for due liberty with insolent princes: and have had power to clip the wings of Royalty; and the custome of all Europe almost besides hath seemed to give such countenance to such attempts; but the deep wisdom, and inviolable loyalty of Parliaments to this composition of government hath been such, that they never made any invasion upon it. As it was in all former ages, so it now remaines intire with all its glorious ensignes of honour, and all the complements of power; and may bee as odious which seeks to alter or diminish Monarchical government for the future, as he which seeks to make it infinite, and slanders Parliaments as enemies to it, in endeavours to blow such jealousies into the Kings ears.

3 No advice can bee so fit, so forcible, so effectuell for the

publicke welfare, as that which is given in Parliament: if any Cabinet Counsellours could give as wise sincere advice as Parliaments, yet it could not be so profitable, because the hearts of the people do not go along with any other, as with that.

That King which is potent in Parliament, as any good King may, is as it were so inskonfed in the hearts of his subjects, that he is almost beyond the trayns or aimes of treason and rebellion at home, nay forrainge hostility cannot peirce him, but through the sides of all his people,

It ought to be noted also, that the English have ever been the most devoted servants coequall, sweetly moderate Sovereignty; so in our English Parliaments, where the Nobility is not too prevalent, as in *Denmark*, nor the commonalty, as in the *Netherlands*, nor the King, as in *France*, Justice and policie kisse and embrace more lovingly then elsewhere. And as all the three states have alwaies more harmoniously borne their just proportionable parts in *England* then elsewhere, so now in these times in these learned, knowing, religious times, we may expect more blessed counsell from parliaments then ever we received heretofore. May it therefore sinke into the heart of our king to adhere to parliaments, & to abhorre the grosse delusive suggestions of such as disparage that kinde of Councell. May he rather confide in that Community which can have no other end but their owne happinesse in his greatnesse, then in Papists, Prelates, and Projectors, to whom the publick disunion is advantagious. May he affect that gentle prerogative which stands with the happinesse, freedome, and riches of his people, and not that terrible Scepter which does as much avert the hearts, as it doth debilitate the hands, and exhaust the purses of his Subjects. May he at last learne by experience, that the grievance of all grievances, that that mischiefe which makes all mischiefes irremediable, and almost hopelesse in *England* at this day, is, that Parliaments are clouded, and refused, and suffe-
red.

red to be calumniated by the ill boding incendiaries of our state. May it lastly enter into his beliefe, that it is impossible for any Kingdome to deny publick assent for their Princes aid, either in Parliament or out, when publicke danger is truly imminent, and when it is fairly required, and not by projects extorted: that no Nation can unnaturally seeke its owne ruine, but that all Kings, like *Constantine*, may make their subjects purses their own private coffers, if they will demand due things, at due times, and by due meanes.

4. I come now to the last difficulty, about the condition and nature of such aydes as are due by Law from the Subject to the King, Though much have beene argued, both at the barre and on the Bench, for the King, that hee may raise moneyes from his Subjects, without consent by Law, Prerogative, and necessity. Yet at last, because the petition of Right absolutely crosses this tenet, it is restored to us backe againe, and yeelded, that the King may not impose a pecuniary charge by way of Tollage, but only a personall one, by way of service. And now all our controverfies ends in this, that we must contest, whether the Ship-scot be a pecuniary, or a personall charge: For though the intent of the writ, and the office of the Sheriffe be to raise moneyes only, yet the words of the writ, and the pretence of state, is to build and prepare Ships of war. The Kingdome generally takes this to be a meer delusion and imposture, and doubtlesse it is but a picklock tricke, to overthrow all liberty and propriety of goods, and it is a great shame that so many Judges should bee abettors to such fraudulent practise contrived against the state. It is not lawfull for the King to demand moneyes as moneyes, but it is lawfull to demand moneyes under another wrong name, and under this wrong name, all former lawes and Liberties shall be as absolutely cancelled, as if they had beene meere cobwebs or enacted only out of meere derision. If former lawes made to guard propriety

of goods were just, and grounded upon good reason, why are they by this grosse fallacie, or childish abuse defeated. If they were not just, or reasonable, what needes such a fond subtilty as this? why should they not be fairly avoided by Law? why were they made at all? but be this invention what it will, yet we see it is new; if it be quashed, the state is but where it was, we are still as our Aneestors left us; and since our preceeding Kings never heretofore put it in use in the most necessitous calamitous times, we may from hence inferre, that the plea of state necessity falls off of it selfe; if wee admit not of this innovation, then the state suffers not; but if we admit it, no necessity being of it, we can frame no other reason for our so doing, but that our former franchises and priviledges were unjust, and therefore this way they must be annulled. Some of our Judges do prove, that if this were a personall service, yet it were void; and they cite the case of Barges, and Ballingers vessells, built truly for war in time of imminent danger; and yet these charges upon complaint made by the Subject, were revoked, and disclaimed. But here, in this case many other enormities and defects in Law are, for if ships be intended to be built in Inland Countries, a thing impossible is enjoyned; and if moneys bee aimed at, that very aime is against Law: and if the Kingdome were to be disfranchised, it were not to be done by an illegall way.

Besides, in the writ, in the *Assessment*, in the *Sheriffes* remedy against *Recusants* of it, in the execution of Law, by, or after judgement, many inconveniences, errors, and mischiefs, arise many wayes: and sure take the whole case as it is, and since the Creation no whole Kingdome was ever cast in such a cause before.

Besides, though the Judges ought wholly to have bent themselves upon this, to have proved this a personall service, and no pecuniary charge, they have roved after necessity, presumption of Law, and Prerogative, and scarce said any thing at all hereof.

My

My Lord *Bramston* argueth very eagerly, that personall seruices by Sea and Land are due to the king in cases of extremity and all their records, cases, and presidents prove no more, and that men may be arrayed, and ships pressed, and that *sumptibus populi*; but there is nothing proved that the meere raising of moneys in this case, is a personall service. *J. Jones* indeed argueth to this purpose If the Law intrust the King with so great a power over mens persons, why not over their estates? There is clear reason for the contrary: because the King, if he should abuse mens personall aides, could not enrich or profit himselfe thereby, and we know it is gaine and profit, it is *Auri sacra fames* which hath power over the breasts of men. It is not ordinary for Tyrants to imbattaile hoasts of men, and make them charge upon the Seabillowes, and then to gather up Cockles and Pinwinckle shells in lieu of spoile, as one did once: but the world abounds with stories of such princes, as have offended in abusing their power over mens estates, and have violated all right divine and humane, to attaine to such a boundlesse power.

Good Kings are sometimes weak in coveting boundlesse power some affect rivalry with God himself in power, and yet places that power in doing evill, not good: for few Kings want power to doe good, and therefore it misbecomes not sometimes good Subjects to be jealous in some things of good Kings. But *J. Jones* farther sayes, that ships must be built, and without money that cannot be done: *ergo*. This necessity hath beene answered, and disproved already, and I now adde, that for the good of the Kingdome there is more necessity that Shipmoney be damned then maintained. Such unnaturall slaverye scemes to mee to be attendant upon this alldevouring project, and such infamy to our Ancestors, our Lawes, and our selves, nay, and such danger to the King and his posterity, that I cannot imagine how any forraigne conquest should induce any thing more to be detested and abhorred.

Those

Those Kings which have been most covetous of unconfin'd immoderate power, have beene the weakest in judgement, and commonly their lives have been poore and toylsome, and their ends miserable, and violent, so that if Kings did rightly understand their own good, none would more shunne uncontrollable absolutenesse then themselves.

How is the King of *France* happy in his great *Prerogative*? or in that terrible stile of the King of *Asses*? we see that his immoderate power makes him oppresse his poore *Pesants*, for their condition is most deplorable, and yet set his power aside, and there is no reason why he should not be as a Father to cherish them, as a God to comfort them, not as an enemy to impoverish them, as a tormentor to afflict them.

2. His oppression makes him culpable before God: he must one day render a sad account for all the evill which he hath imposed, for all the good which he hath not procured to them. That the vicegerent of God should do the office of a tyrant, will be no light thing one day.

3. His sinne makes him poore: for were his *pesants* suffered to get wealth and enjoy it, the whole Land would be his treasury and that treasury would containe twice as much as now it doth.

4. His poverty makes him impotent, for money being the sinewes of war, how strong would his joynts be, if all his subjects were abounding in money, as doubtlesse they would, if they wanted not liberty, and propriety: besides, poverty depresses, the spirit of a Nation; and were the King of *France*, King of an Infantry, as he is only of a Cavakie, were he a King of men, as he is only of beasts, had he a power over hearts, as he hath over hands, that Country would be twice as puissant as it is.

5. His impotence, together with all other irregularities, and abuses is like to make his Monarchy the lesse durable. Civill wars have ever hitherto infected & macerated that goodly Country,

they, and many times it hath been near its ruine: it now enjoyes inward peace, but it doth no great exploits abroad, nor is ever likely to do, unlesse by practising upon the distemper of other Nations: should some other Prince practise in the like manner upon that, and propose liberty to the grieved people, much advantage might be taken: but these avises would better proceed from that most heroick, most terrible, most amipotent Church-man, which effects such great wonders heere: we see hence that Princes by some gaine, lose, as the whole body pines by the swelling of the spleene: we see that *Rehoboam* caught an immoderate power, as the dog in the fable at a shadow, but instead of an uncertaine nothing, he let fall and lost a certaine substance; and yet flatterers have scarce any other bait then this shadow of immoderate power, whereby to poison the phantasies of weake humours, undiscerning rash Princes

My humble motion therefore is: First, that the judgement given in the Chequer chamber for Ship-money, may be reversed, and damned, as contrary to the right of the Subject.

Secondly, that those Judges which adhered to equity & integrity in this case, might have some honorable guerdon designed them.

Thirdly, that some dishonourable penalty may be imposed upon those Judges which ill advised the King herein, and then argued as pleaders, not as Judges; especially if any shall appear to have solicited the betraying of the Kingdom.

Fourthly, that the meaning of our Lawes and Charters, may be fully and expressly declared, and the force and vertue of statutes and publick Grants, may be vindicated from all such exceptions and objections as have been particularly or generally made against them.

Fifthly, that a clearer solution may be given in the foure maine points stirred how far prerogative is arbitrary and above Law; and how far naturall Allegiance bindes to yeeld to all demands

not.

not of Parliament: next, how the King is sole Judge of danger, as that his meere cognizance thereof shall be sufficient, though there be no appearance or probability thereof. Next, how a necessity of publick ruine must be concluded now, if Ship-money be not levied, when no such ruine hath been formerly, when this new plot was not devised. Lastly, how this Ship scot pretending ships, but intending money, and really raising the same, can be said to be no pecuniary Tollage within our statutes, but a meere personall service.

Sixthly, that any officers, or ministers of state, which shall attempt to lay the like taxes hereafter upon the Subject, by vertue of the like void warrants, may be held and taken as Felons, or Traytors, or forcible Intruders.

Seventhly; that something may be enacted against forraign and domesticall Forces also, if they shall be congregated for the like purposes; and that the subject may bee enabled by some fit and timely remedy to be given against a military kinde of government.

Eighthly, that the due way of publick defence, in case of imminent and eminent danger, or actual necessary war, for the pressing of men, and other charges of war, such as core and Conduct money, and all duties thereabout, may be made more certaine, & settled for the future to come.

Ninthly, that if the Kings ordinary revenues now taken for the Crowne, be not sufficient to maintaine him, as our great Master, some legall order may be taken therefore, and that hee may be sensible of his Subjects loyalty, and his Subjects live safe under him, that his enemies may finde him considerable, and his true friends usefull.

F F N I S.

